IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 423 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHIMANLAL MANJIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR MJ BUDDHBHATTI for Petitioner

MS GAJJAR, APP, for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE A.L.DAVE

Date of decision: 11/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. The present appeal is preferred against judgment and order of learned Additional Sessions Judge, Bhavnagar, dated March 30, 1990, passed in Sessions Case No.68 of 1988, convicting the accused-appellant under Section 302 of Indian Penal Code and sentencing him to undergo life imprisonment.

2. The facts of the case, in a narrow compass, can be stated thus:

2.1 The accused-appellant was married to Ushaben, the deceased. Prior to the marriage with the accused, Ushaben was married to one Himatlal, from whom she had obtained divorce. The deceased and Chimanlal were staying in Gadhada in Bhavnagar district in a house belonging to the father of the deceased. On the 10th June, 1988, mother of deceased-Ushaben and her sister came to the house of the accused and they had their meal in the afternoon. Since the mother of the deceased (complainant) was not feeling well, she and her sister went to a doctor. They left the house at about 4.30 P.M. After consulting the doctor, they returned to the house at about 5.30 P.M. and found that the house was locked. Thinking that the deceased and her husband, i.e. the present appellant, may have gone out in the market, they waited outside the house upto 9.30 P.M. During this period of four hours, they visited the neighbouring house for a glass of water, etc. At about 9.30 P.M., losing patience, they decided to break open the door and, therefore, they borrowed a hammer and a chisel from a neighbouring house. They broke open the house and went into the house. In the house, they found the deceased lying in an injured condition amidst a puddle of blood. Both of them were shocked and, ultimately, they decided to call for Shantilal, brother of the complainant, from Botad. On receiving the message, Shantilal arrived at about 10.30 P.M. Thereafter, the complaint was lodged at 1.30 after the midnight. On basis of the complaint, offence was registered and the investigation was set into motion. The Investigating Officer recorded statements of various witnesses, got the inquest Panchnama done, Panchnama of the place of offence was also done in presence of Panch witnesses, got the postmortem of the dead body performed and after collecting evidence, came to conclusion that there was ample evidence against the accused connecting him with the offence of murder and, therefore, filed a charge sheet in the Court of learned Judicial Magistrate, First Class, at Gadhada. The case, however, triable exclusively by Court of Sessions and was, therefore, committed to the Court of Sessions. It was registered as Sessions Case No.68 of 1988. The

accused was charged with the offence of murder of Ushaben with the help of an iron pounder. The accused pleaded not guilty to the charge and expressed his desire to face the trial.

2.2 The prosecution has examined following witnesses:-

(1) P.W. No.1-Prabhaben Chhaganlal (Ex.19).
(2) P.W. No.2-Kana Puna (Ex.20).
(3) P.W. No.3-Kirit Labhshanker (Ex.22).
(4) P.W. No.4-Shantilal Chhaganlal (Ex.24).
(5) P.W. No.5-Chandrakant Kantilal (Ex.27).
(6) P.W. No.6-Madhusudan Mohanlal Vyas (Ex.29).
(7) P.W. No.7-Thakersi Valji (Ex.31).
(8) P.W. No.8-Suresh Chhaganlal (Ex.32).
(9) P.W. No.9-Natubhai Amarbhai (Ex.33).
(10) P.W. No.10-Bhikhabhai alias Prabhubhai (Ex.34).
(11) P.W. No.11-Bijal Bhagwan (Ex.36).
(12) P.W. No.12-Bhagwandasji Guruji (Ex.37).
(13) P.W. No.13-Rumalsinh Bhaijibhai (Ex.41).

2.3 The prosecution has also produced relevant documentary evidence like Postmortem notes, inquest Panchnama, Panchnama of the place of evidence, etc. After considering the evidence led by the prosecution, the Trial Court came to conclusion that the prosecution had successfully established the charge against the accused and, therefore, convicted the accused for the offence of murder punishable under Section 302 of Indian Penal Code and, after hearing him on question of sentence, imposed a sentence of life imprisonment. Being aggrieved by the said judgment and order, the present appeal is preferred by the original accused.

3. Learned advocate, Mr. Budhbhatti, appearing for the appellant has raised many contentions. It is contended by him that this is a case based on circumstantial evidence. There is no direct evidence led by the prosecution to connect the accused with the offence and, therefore, the prosecution ought to have established the continuous chain of circumstances connecting the accused with the offence. According to Mr. Budhbhatti, the prosecution has failed to establish this chain. There are many other infirmities in the prosecution case, according to Mr. Budhbhatti and, therefore, an error is committed by the learned Additional Sessions Judge in accepting the prosecution case and convicting the appellant.

3.1 Mr. Budhbhatti submitted that the complaint is

lodged very late. The incident is alleged to have occurred in between 4.30 and 5.30 P.M. on June 10, 1988, whereas the F.I.R. is lodged at 1.30 A.M. on June 11, 1988. Mr. Budhbhatti submitted that the complainant came to know about the incident latest by 9.30 P.M. and, in ordinary course, a mother would have raised hue and cry and lodged the F.I.R. immediately. Instead, the F.I.R. is not lodged and Shantibhai is summoned. Shantibhai arrives at Gadhada at 10.30 P.M. and, thereafter also, the F.I.R. is not lodged for three hours. This delay is not explained. According to Mr. Budhbhatti, the F.I.R. is lodged after deliberations. Mr. Budhbhatti submitted that the conduct of the complainant and her sister of waiting outside the house from 5.30 P.M. till 9.30 P.M. on the day of the incident is also unnatural. He submitted that, as per the prosecution case, the lock was broken open with the help of a hammer and a chisel and no witness is examined to substantiate this version. The person from whom the hammer and chisel was borrowed has not been examined. Mr. Budhbhatti submitted that the possibility indicated by the defence of the accused being not in Gadhada around the time of incident cannot be ruled out. There is no evidence to indicate that the accused was in the house when the incident has occurred. The only evidence is that of the accused and the deceased having seen together. Mr. Budhbhatti submitted that even that piece of evidence is not sound.

3.2 Mr. Budhbhatti submitted that some incident that has occurred about 4-5 days prior to the incident is indicated to establish motive. The prosecution has tried to indicate that the deceased and the accused were not sailing smooth in their marital life and there were quarrels. After the quarrels, the accused would lock the house from outside and go away as he suspected the character of the deceased. It is also tried to be shown that about five days prior to the date of incident, the deceased and the accused had gone to perform the rice ceremony at Surdhang where the sister and mother of the accused were also present. They had assaulted the deceased and, at that time, it is alleged that the accused told them not to beat the deceased as he would reduce her to her size after going home. It is, therefore, tried to be suggested by the prosecution that following this incident, the accused had done away with the deceased by throttling her with an iron pounder.

3.3 Mr. Budhbhatti submitted that, if the accused was really bent upon doing away with the deceased, he would not have waited for 4-5 days after the Surdhang incident. At least, he would not choose a day when the

mother and the aunt of the deceased were very much at their home. Mr. Budhbhatti submitted that the house where the incident has occurred is located on the main road in a thickly populated area. Around 4.30 to 5.30 in the afternoon, there would be many people around and, if the injuries as found on the person of the deceased were caused, there would have been some uproar and people would have noticed the same. These factors have not been considered by the Trial Court.

3.4 Mr. Budhbhatti submitted further that the accused was arrested from Damnagar. The case of the accused is that he was required to go out of Gadhada for fetching his son. He had left the house along with the complainant. This version of the accused is supported by one of the prosecution witnesses, who met the accused at Dhamel and took the accused to Damnagar, as the accused wanted some money from him and, therefore, the accused could not have been at Gadhada when the death of the deceased had occurred. Mr. Budhbhatti submitted further that finding of blood stained clothes on person of the accused has weighed a great deal with the Trial Court. According to Mr. Budhbhatti, this is an unnatural version emerging from the prosecution evidence. Mr. Budhbhatti submitted that, after 24 hours of the incident, a person would not move out with blood stained clothes. Mr. Budhbhatti submitted that seizure of blood stained clothes is not properly proved by the prosecution. According to the Panch witnesses, blood stained clothes were lying on the table when he went to the Police Station as a Panch. Mr. Budhbhatti submitted further that, although, admittedly, the accused was found at Damnagar Police Station and was arrested, no Panchnama was drawn at Damnagar and from Damnagar, he was taken to Gadhada where the Panchnama is drawn. These circumstances, even if considered as a link, provide only a very weak link in the prosecution case. Mr. Budhbhatti, therefore, submitted that even a weak link would prove to be fatal to the prosecution case where the case is founded only on circumstantial evidence. Mr. Budhbhatti submitted that these aspects are not considered by the learned Trial Judge and conviction is recorded. He urged that, under the circumstances, the judgment and order recording conviction of the appellant may be quashed and set aside and this appeal may be allowed.

4. The appeal is opposed to by Ms. Gajjar, learned Additional Public Prosecutor. She submitted that the relations of the accused with the deceased were strained for a long time. According to her, the strained

relationship and torture by the accused are proved by the prosecution by producing letters at Ex.38, 39 and 40 written by an independent person. She submitted that the accused had determined to do away with the deceased. This determination is reflected from what was stated by him at Surdhan when he told his mother and sister not to beat the deceased and that he would reduce her to her size after going home. Ms. Gajjar submitted that the presence of the accused at the place of the incident is established by the prosecution by examining the complainant and witness-Natubhai Amrabhai, who says that he had brought the auto-rickshaw for sending the complainant and her sister to the doctor at 4.30 P.M. Thereafter, the accused was very much at home. The defence version that he had left with the complainant and her sister in auto-rickshaw is not accepted by Natubhai Amrabhai in his deposition. On the contrary, he says that the two ladies had gone alone in an auto-rikshaw. Ms. Gajjar, therefore, urged that the defence is coming with a wrong defence and, therefore, the Trial Court was right in convicting the accused on the basis of the evidence led by the prosecution. Ms. Gajjar submitted that, according to the defence, the accused was required to go to Dhamel for fetching his son. This story is negatived by the deposition of Natubhai Amrabhai and, therefore, the presence of the accused at the house just before the incident is established. The previous incident at Surdhang, the strained relationship between the deceased and the accused, the presence of the accused at the house just before the incident, the finding of the dead body from the house and absconding of the accused from the house for two days established a strong change of circumstances which connect the accused with the offence. Ms. Gajjar submitted that the accused has not tendered any explanation for the stains of blood found on his clothes. She further submitted that the key to the house was found from the person of the accused. That key operated the lock which was placed on the door meaning thereby that the accused had last left the house and had absconded. She, therefore, urged that the appeal may be dismissed.

5. In reply to the arguments advanced by Ms. Gajjar, Mr. Budhbhatti submitted that even according to the prosecution witnesses, the lock was broken open and, therefore, the lock could not have been operated with the help of the key found from the accused. The story, therefore, is not believable. As regards the letters referred to by Ms. Gajjar (Ex.38, 39 and 40), Mr. Budhbhatti submitted that these letters appeared to have been written about a year prior to the incident and there

is nothing to indicate any recent disharmony in relations between the accused and the deceased. Even if what is stated in these letters is correct, the disputes were settled prior to the incident and, therefore, this cannot carry the case of the prosecution any further. Mr. Budhbhatti submitted that the letters relied upon by the prosecution would not indicate existence of any animosity or presence of any motive for the accused prior to the incident. Mr. Budhbhatti submitted that the prosecution's own witnesses have admitted that the quarrels between the accused and the deceased were petty in nature and the disputes were resolved once there is a quarrel. It is also admitted by the witnesses that neither the accused nor the deceased had any desire of taking a divorce following the quarrels. Mr. Budhbhatti submitted that the disputes between the accused and the deceased were routine marital superficial quarrels and cannot be attributed any special weightage. He, therefore, submitted that the appeal may be allowed.

6. Having regard to rival side contentions, in light of the evidence what emerges as undisputed factual scenario is that the deceased and the accused were staying at Gadhada in the house that belongs to the mother of the deceased, the present complainant. There were some disputes between the deceased and the accused. On the day of the incident, the complainant and her sister had gone to the house of the accused/deceased. They had a lunch together and at about 4.30 P.M., the complainant and her sister left for doctor in an auto-rickshaw brought by Natubhai Amrabhai. They returned to the house at about 5.30 P.M., but found that the house was locked. They waited outside the house for about four hours and then broke open the house to find dead body of the deceased. Thus, there is no eye-witness to the incident and, therefore, the prosecution was required to establish the case against the accused by leading circumstantial evidence which could connect the accused with the offence.

7. The first circumstance that is indicated is that there were quarrels between the spouses, i.e. the accused and the deceased, and last such quarrel took place at Surdhan, at the rice ceremony, when the deceased was assaulted by the sister and the mother of the deceased and, at that time, the accused told them not to beat the deceased as he would reduce her to her size. This provided motive for the accused to do away the deceased, as per prosecution. However, in this regard, if the evidence led by the prosecution is seen, the witnesses have clearly stated that the quarrels between

the accused and the deceased were petty in nature. They would quarrel for some time. The accused would go out of the house and after some time, the dispute would be resolved/settled. It also comes into evidence that neither the accused nor the deceased planned to have divorce. This would reflect that the disputes between the accused and the deceased were not of a serious nature and can be said to be ordinary marital upsets.

7.1 The prosecution evidence regarding Surdhan incident is narrated by the complainant. Barring her, there is no other witness to corroborate this version. Even if what is stated by the complainant is accepted at face value, it is to be appreciated that the said incident took place about five days prior to the present incident. For these five days, the accused and the deceased were alone in the house and nothing prevented the accused from doing away with the deceased, if he was really bent upon to do so. That was not done by the accused which indicates that either no such incident occurred at Surdhang or that the words that are put into his mouth were uttered without seriousness and, therefore, the motive part cannot be accepted.

8. The other circumstance that is indicated to connect the accused with the incident is that his having been seen last in company of the deceased. Here, in this regard also, it may be noted that the evidence that is on record indicates that the accused and the deceased were at home. The complainant and her sister reached their home in the morning, they had their lunch in the afternoon and, late in the afternoon, at about 4.30 P.M., the complainant and her sister went out in an auto-rickshaw. Upto this point, there is no dispute. The real dispute starts thereafter when, according to the accused, he left the complainant and the accused for going to Dhamel for fetching his son, whereas, according to the prosecution case, the accused did not accompany the complainant and his sister in the auto-rickshaw. It is, therefore, pressed by the prosecution that the accused was seen last in the company of the deceased. The prosecution evidence of Natubhai Amrabhai indicates that he had fetched an auto-rickshaw. He says that the mother-in-law of the accused and her sister left in the auto-rickshaw. He specifically denies that the accused also left in the said auto-rickshaw. But he also admits that after bringing the auto-rickshaw, the complainant and her sister left in the auto-rikshaw and he went away. He does not state anything further to indicate that the accused went back into the house and stayed there. Against this, the defence that the accused had left

Gadhada for going to Dhamel for fetching his son needs consideration. The prosecution witness-Thakersi Valji (Ex.31) is an important witness in this regard. He says that, on the date of the incident, i.e. on June 10, 1988, the accused-Chimanlal came to Dhamel at about 5.00 - 5.30 P.M. It is also in his evidence that distance between Gadhada and Dhamel is 35 kms. If the accused was at Dhamel at about 5.00 - 5.30 P.M., he would be required to leave his house along with the complainant at about 4.30 P.M. Otherwise, physically it would not be possible for the accused to reach Dhamel at about 5.00 - 5.30 P.M. The possibility of the accused being not at the house around the time when the incident occurred, therefore, cannot be ruled out.

8.1 Witness-Thakersi Valji, having not supported the prosecution case, is declared hostile and has been cross-examined. But nothing comes out of his cross-examination by the prosecution. This witness also explains the presence of the accused at Damnagar bus station wherefrom he was arrested. According to Thakersi Valji, the accused approached him on the date of the incident at about 5.00 - 5.30 P.M. and told him that he has to take his son to Gadhada and he needs money to pay fees and purchase clothes. The witness, therefore, asked him to stay over and he would give the money on the next day. On the next day, at about 11.00 A.M., the witness took the accused to one Sureshbhai, who stays at Damnagar. He had borrowed money from Sureshbhai and gave to the accused. Thereafter, they went to the bus station at about 12.30 P.M. when Gadhada police came and arrested the accused. This would explain the presence of the accused at Damnagar bus station and would indicate the possibility of the accused of not absconding after the incident, but having left the house for fetching his son and being caught on the next day at Damnagar bus station. The version of Thakersi Valji also gets support from witness Suresh Jagannath (Ex.32), who says that Thakersi and Chimanbhai had come to him for borrowing money. Thakersi had borrowed Rs.1000/- from him and gave it to Chimanbhai and along with them, there was a young boy aged about seven years. These aspects, in our view, are overlooked by the learned Additional Sessions Judge while delivering the judgment.

9. The next circumstance that is indicated against the accused is that he was found to be wearing blood stained clothes when he was arrested. As can be seen, the accused was arrested on the next day. No doubt, the F.S.L. report indicates that his Pyjama carried blood stains. But it is also to be kept in mind that, although

the accused was arrested at Damnagar bus station, no Panchnama was drawn at that place. In fact, the accused is taken to Gadhada and there Panchnama is drawn. In this regard, the evidence of the Panch witness requires consideration. Panch witness-Kirit Labhshanker is examined at Ex.22. He states that he was called by the Police on 11.6.1988 at 6.30 P.M. at Gadhada Police Station. The accused was in police custody. He noticed that Chimanbhai was wearing a white Pyjama and grey bush-shirt. Both the clothes carried blood stains. These were seized by the police. The police also had one key. In cross-examination, he states that when he went to the Police Station, accused-Chimanbhai was sitting there. He was not wearing either the Pyjama or the grey bush-shirt, but they were lying there. Accused was wearing different clothes. This indicates that arrest of the accused wearing blood stained clothes cannot be said to have been properly established. All that is indicated that the police had a Pyjama and a shirt in their possession, which were blood stained and the accused was also sitting in the Police Station. Therefore, the seizure of blood stained clothes is not properly established by the prosecution. This also breaks the chain of the circumstantial evidence.

10. Apart from the above stated weaknesses in the circumstantial evidence of the prosecution case, there are certain other infirmities which also need to be considered. We find substance in the argument advanced by Mr. Budhbhatti that if the incident at Surdhang had really occurred and if the accused was really serious about doing away with the deceased, he would not have waited for four to five days when he had the opportunity of doing away with the deceased earlier. Ordinarily, a man would not choose a day when his mother-in-law is available in the town to do away with his wife. Besides this, it is to be appreciated that the incident has occurred in a house which is located on a main road in a thickly populated area. The alleged incident seems to have occurred between 4.30 P.M. and 5.30 P.M., around the time when there would be many people moving around and, therefore, ordinarily this time would not be selected for committing such offence.

10.1 The conduct of the complainant and her sister is also unnatural. After returning from the doctor at about 5.30 P.M., finding the house locked, they sat outside the house for about 4 hours, visited the neighbourhood for a glass of water, etc., but make no inquiries as to where the accused and his wife have gone. Thereafter, they broke open the house by borrowing a hammer and a chisel

to find the dead body of the deceased and they did not raise any hue and cry. Instead of calling the police or neighbouring people, they sent a word to Shantilal at Botad and sat tight till he arrived at 10.30 P.M. This also reflects an unnatural conduct on part of the complainant and her sister. It would be worthwhile to note that the person from whom the hammer and the chisel were borrowed is not examined.

10.2 After Shantilal arrived at 10.30 P.M., the complaint is lodged at 1.30 A.M. in the earlier houses of the next day, i.e. after about 3 hours. This time is tried to be explained meekly by saying that after Shantilal arrived, time was consumed in crying over the deceased. This is a very weak explanation and not worth acceptance. The result is that the complaint is given very late and even accepting the prosecution case at face value, it is given after deliberations with Shantilal. That would weaken the prosecution case further. We have gone through the judgment rendered by the learned Additional Sessions Judge. We are not able to agree with the reasoning adopted by the learned Additional Sessions Judge while dealing with the above aspects. For the reason that the evidence led by the prosecution has to be tested by close scrutiny and, thereafter, if found to be reliable, can be accepted. Delay of 3-4 hours only on ground of crying over the deceased cannot be accepted as reasonable particularly when the complainant and her sister sat over the dead body for an hour doing nothing, waiting for Shantilal.

11. It was argued that the letters indicated ill-treatment by the accused to the deceased. It may be noted that the letters were written above an year prior to the incident and, there is also a mention in the letter that everything is going well. In view of this, the letters cannot carry the prosecution case any further particularly when the evidence of Natubhai Amrabhai indicates that the quarrels were petty in nature and after the quarrels the accused and his wife used to resolve the disputes and stay together.

11.1 As regards the key found from the possession of the accused, it may be noted that, admittedly, the lock was broken open and there is no evidence to indicate as to how it was broken open and what was the condition of the lock after it was broken open - whether it could have remained operational - is also a question that has remained unanswered by the prosecution and, therefore, the factum of key having been found from the accused and that key being used for testing the lock broken open by

the complainant and found to be working on it is difficult to be accepted to carry the case of the prosecution any further.

12. If the prosecution case is considered in light of the infirmities discussed above and the defect in the circumstantial evidence led by the prosecution, it cannot be said that the prosecution could prove the case against the accused-appellant to the hilt. There are many missing and weak links in the gain of circumstances, the benefit of which must go to the accused and we are, therefore, inclined to entertain this appeal and set aside the judgment and order impugned in this appeal.

13. The appeal is, therefore, allowed. The impugned judgment and order passed by the learned Additional Sessions Judge, Bhavnagar in Sessions Case No.68 of 1988 dated the 30th March, 1990 is hereby set aside. The appellant-accused is ordered to be set at liberty forthwith, if not required in any other case.

[M.H. KADRI, J.]

[A.L. DAVE, J.]

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